Supreme Court of the United States

No. 528

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA AND BRIEF IN SUPPORT THEREOF

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IN THE

Supreme Court of the United States

OCTOBER TERM 1948

No.

HAROLD ROLAND CHRISTOFFEL,
Petitioner,

v.

UNITED STATES OF AMERICA.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

To the Honorable The Chief Justice of the United States and The Associate Justices of The Supreme Court of the United States:

The petitioner herein prays that a writ of certiorari be issued to review the judgment of the United States Court of Appeals, District of Columbia, entered November 22, 1948 (R.), affirming the judgment of conviction of the petitioner in the United States District Court for the District of Columbia (R. 28).

Statement of the Matter Involved.

The petitioner has been found (R. 268) and adjudged (R. 28) guilty of the crime of perjury as defined by Title 22, Section 2501, of the District of Columbia Criminal Code (R. 1, 28, 256); and the judgment of conviction has been affirmed by the United States Court of Appeals for the District of Columbia (*Christoffel v. U. S.*, __ F. 2d __).

Late on the afternoon of Saturday, March 1, 1947, in the City of Washington, D. C., the petitioner, an employee of the Allis-Chalmers Manufacturing Co., a resident of and trade union leader in the City of Milwaukee, Wisconsin, was called upon to and did give certain testimony. The alleged perjury was committed at that time; it consisted of answers given in response to questions put by a solitary congressman, to wit, Rep. Clare Hoffman of Michigan, a member of the 80th Congress and of the Committee on Education and Labor of the House of Representatives of that Congress. The circumstances of the alleged crime are set forth below.

The Committee on Education and Labor** was (and is) a standing committee of the House of Representatives (Legislative Reorganization Act of 1946). During the first session of the 80th Congress, it held numerous hearings on proposed amendments to the National Labor Relations Act and in the week of February 24, 1947, it held such hearings every day.*** On Monday of that week (February 24) the entire day was devoted by the House Committee to hearing the *unsworn* testimony of representatives of the Allis-Chalmers Manufacturing Co. of Milwaukee who, in addition, submitted to the Committee a voluminous documenta-

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* As distinguished from the crime of perjury defined by 18 U. S. C. § 231.

** Hereinafter sometimes referred to as the "House Committee."

*** Hearings before the Committee on Education and Labor, House of Representatives, 80th Congress, First Session, Vol. 3, pp. 1335, *et seq.* (hereinafter referred to as House Committee Hearings (Gov't Exhibit No. 6; R. 141)).

tion of charges that the petitioner and other members of his union were Communists.* At the time of these hearings, the petitioner's union was conducting a strike against Allis-Chalmers.**

Two days after receiving this unsworn testimony, Rep. Hartley of New Jersey, Chairman of the House Committee, on the floor of the House of Representatives, sought and received authority to administer oaths to witnesses.*** This authority was not exercised in the case of any one of the many witnesses who appeared before the House Committee on the three days immediately preceding March 1, 1947,**** but was used for the first time on March 1, 1947, when the petitioner and other representatives of his striking union appeared to testify.*****

When the House Committee adjourned for the day late on the afternoon of Friday, February 28, 1947, the Chairman, anticipating the hearings of the next day, announced that it would meet the following morning at 10:00 A. M. "at which time we will hear the witnesses that were in the *Allis-Chalmers* case who were requested to appear before the Committee" (House Committee Hearings, Vol. 3, p. 1973). On the following morning, as soon as the Committee had been called to order at 10:00 A. M., the Chairman called out the petitioner's name and otherwise indicated the Committee's disposition to hear him as the first order of business. It was at once apparent that the petitioner was ill and could not appear before the House Committee until later in the day (House Committee Hearings, Vol. 4, pp. 1973, 2079). Consequently Robert Buse, president of the petitioner's local union, and R. J. Thomas, vice president of petitioner's international union, gave their testimony

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* *Ibid.*, pp. 1335 *et seq.*

** *Ibid.*, p. 1355.

*** Cong. Rec. Vol. 93, pp. 1504-1510; Gov't Exhibit No. 2 (R. 31) (House Resolution No. 111 adopted Feb. 26, 1947).

**** House Committee Hearings, Vol. 3, pp. 1627, *et seq.*

***** *Ibid.*, Vol. 4, pp. 1973, *et seq.*

before the petitioner appeared; both witnesses were sworn (House Committee Hearings, Vol. 4, pp. 1973, 2049).

Buse and Thomas made oral statements, answered questions and submitted memoranda which pertained to proposed amendments to the National Labor Relations Act, to the pending strike by their union at the Allis-Chalmers plant in Milwaukee and to the causes and issues involved therein (House Committee Hearings, Vol. 4, pp. 1973-2079).

The petitioner, having recovered from his illness sufficiently to make an appearance, began his testimony some time after 4:00 P. M. on this Saturday afternoon (R. 52, 100, 166, 175, 192, 199, 222); most of his testimony was addressed to the pending strike at Allis-Chalmers, the proposed methods of settling it, various theoretical labor-management problems, and certain legislative recommendations proposed by his union (House Committee Hearings, Vol. 4, pp. 2079-2094). None of this testimony was alleged to be perjurious (R. 1-8). The offensive responses occurred just prior to 5:00 P. M., the hour when the few remaining members of the House Committee went into "executive session". (House Committee Hearings, Vol. 4, p. 2100), and at the tail end of the petitioner's testimony that day.

The preface to the testimony which formed the basis of the indictment below was most disarming. Before inquiring into the subject of political affiliation of the petitioner, upon which subject the petitioner might well have remained mute if he so chose, Representative Hoffman stated:

> "I want to ask you a few questions that may seem unnecessary, but just for the sake of the record, and they are very short and you can answer them very quickly" (House Committee Hearings, Vol. 4, p. 2094).

In the wake of this inadequate introduction there followed a series of questions which were directed to political affilia-

tion and association of the petitioner. The answers to these questions were forthright and unequivocal. In them the petitioner denied that he was a Communist or that he endorsed, supported or participated in Communist programs. These answers are the heart of the indictment.

In connection with this testimony it is significant that Buse, Thomas and the petitioner were unattended by counsel. Moreover, though a statement by the Chairman of the House Committee as to the purposes of the hearings was made and heard by the petitioner, no effort was made to advise or inform him of his legal rights when thus testifying under oath regarding subject matter which might well be incriminating in areas exclusive of perjury (House Committee Hearings, Vol. 4, pp. 1973, 2049, 2079).

The indictment herein was returned and filed on July 23, 1947 (R. 28) and the petitioner pleaded "Not Guilty" to it (R. 28). Thereafter he moved to dismiss the indictment on multiple grounds (R. 8). In urging this course on the District Court, the petitioner called attention to the fact that though at the time of the alleged perjury he was engaged before a federal body inquiring into matters of general federal importance he nevertheless was charged with violating a criminal statute of local operation. In this connection he pointed out not only that perjury in such circumstances could not impede the functioning of local government in the District of Columbia but that a local crime could not have been generated by the events heretofore described since the administration of the oath, an essential element of the crime, was not authorized by any applicable local statute (R. 8, 9).

Similarly, the petitioner urged dismissal of the indictment on the theory that it failed to aver the attendance of a quorum of the House Committee at the time he was sworn as well as at the time he committed the alleged perjury (R. 9).

The District Court denied the motion to dismiss (R. 10) and in so doing committed error as hereinafter, in this petition, noted.

Thereafter, and in advance of trial, as appears from the original record herein, the petitioner sought to remove his prosecution to the Eastern District of Wisconsin wherein he resided and wherein his political life, affiliations and associations must have had their roots. This effort, made under the authority of Rule 21 (a) of the Federal Rules of Criminal Procedure, was supported by allegations that the petitioner could not obtain a fair and impartial trial in Washington, D. C. not merely because of the abnormal attitude then prevailing in that city amongst government employees and other potential jurors respecting political affiliation or association with Communists but also because a fair trial in Washington, D. C., was an impossibility without granting to the petitioner the opportunity of presenting to the jury the testimony of many witnesses who resided in the Eastern District of Wisconsin, who knew the petitioner's affiliations and associations for many years and who were so numerous and distant from Washington, D. C. as to make it virtually impossible to arrange for their attendance in Washington, D. C. This motion was, as the petitioner contends, improperly denied.

Seeking to lessen the unnaturally heavy burden of proving the negative of the charge that he was a Communist, the petitioner then sought, pursuant to Rule 17(b) of the Federal Rules of Criminal Procedure, an order of the District Court requiring the government to pay subpoena and witness fees to numerous but named potential witnesses whose testimony the petitioner would want on trial but whose presence was otherwise financially impossible. In the alternative, the petitioner sought to take the depositions of such witnesses under Rule 15a. Both applications were denied.

The prosecution was commenced on February 16, 1948 before CURRAN, *J.* (R. 28) and at the outset it was apparent not only that government employees were on the jury panel but that an investigation of said panel had been made by the Federal Bureau of Investigation. Counsel sought the benefit of information thus supplied to the prosecution regarding the prospective jury which was to adjudge the petitioner's guilt or innocence. This was denied (R. 29), as was the petitioner's motion to disqualify the panel (R. 30) because of the impropriety inherent in such investigation.

On the trial herein, the petitioner actively opposed the charge of perjury and six witnesses testified in his behalf on the merits.*

During the trial a major issue developed from the petitioner's contention that before he could be convicted of the crime of perjury under any statute which might be held applicable, the government must prove beyond a reasonable doubt that the petitioner was sworn and testified falsely before a quorum of the House Committee (R. 9, 11, 23, 24, 33, 36, 37, 40, 73, 79-83, 119-143, 244, 245, 259, 260, 267).

The Trial Judge denied petitioner's requests for instructions on this subject (numbered 15-20) (R. 244, 245) and, on the contrary, held and charged:

> "In this case the Committee being composed of 25, before you could have a meeting of that Committee there must have been physically present at least 13 members of that Committee in the committee room. If such a Committee so met, that is, if 13 members did meet . . . and thereafter during the progress of the hearing some of them left temporarily or otherwise and no question was raised as to the lack of a quorum, then the fact that the majority did not remain there would not affect, for the purposes

* This part of the record below is not printed.

of this case, the existence of that Committee as a competent tribunal *provided that* before the oath was administered and before the testimony of the defendant was given *there were present* as many as 13 members of that Committee *at the beginning of the afternoon session*" (R. 259, 260). (Italics added.)

In addition the Trial Judge held and charged that:

> "For the purpose of this case perjury is defined by the Code of Laws of the District of Columbia, Title 22, Section 2501 which provides that:
>
> 'Every person who, having taken an oath or affirmation before a competent tribunal, officer, or person, in any case in which the law authorized such oath or affirmation to be administered, that he will testify truly, wilfully and contrary to such oath or affirmation states or subscribes any material matter which he does not believe to be true shall be guilty of perjury'" (R. 256).

To both these charges exceptions were duly noted (R. 267).

On March 3, 1948, after almost four hours of deliberation, the jury returned a verdict of guilty (R. 28, 268) and two days later the petitioner filed a motion for new trial or for judgment of acquittal (R. 23) which was promptly denied (R. 22, 271) except as to Count II of the Indictment (R. 22, 271). Thereupon the petitioner was sentenced to imprisonment for a period of two to six years (R. 23, 272).

The cause was argued before the United States Court of Appeals for the District of Columbia on October 18, 1948 and the conviction affirmed on November 22, 1948 (*Christoffel v. U. S.*, F. 2d). Rehearing was, by that Court, denied on December 14, 1948.

Jurisdiction

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925 (28 U. S. C. § 347); Federal Rules of Criminal Procedure, Rule 37(b) (18 U. S. C. foll. § 687).

Statutes and Resolutions Involved

1. *Jefferson's Manual, Rules and Manual of the United States House of Representatives* (1947), Section 409:

> "A majority of the committee constitutes a quorum for business."

2. *Legislative Reorganization Act of 1946*, Part 2—Rules of the House of Representatives.

> "Rule X, Standing Committees
>
> (a) There shall be elected by the House, at the commencement of each Congress, the following Standing Committees:
>
> 1. . . .
>
> 7. Committee on Education and Labor, to consist of twenty-five members."

Part 3, Provisions Applicable to Both Houses

Committee Procedure

> "Sec. 133. (a) . . .
>
> (b) Each such committee shall keep a complete record of all committee action . . .
>
> (c) . . .
>
> (d) No measure or recommendation shall be reported from any such committee unless a majority of the committee were actually present."

3. Title 22, Sec. 2501 District of Columbia Code:

"Title 22, Sec. 2501—Perjury—Subornation of perjury. Every person who, having taken an oath or affirmation before a competent Tribunal, officer or person, in any case in which the law authorized such oath or affirmation to be administered, that he will testify, declare, depose or certify truly, or that any written testimony, declaration, deposition or certificate by him subscribed is true, wilfully and contrary to such oath or affirmation states or subscribes any material matter which he does not believe to be true, shall be guilty of perjury; and any person convicted of perjury or subornation of perjury shall be punished by imprisonment in the penitentiary for not less than two nor more than ten years . . ." (March 3, 1901, 31 Stat. 1329, Ch. 854 § 856).

4. Title 18 U. S. C. § 231.

"Perjury. Whoever, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, shall willfully and contrary to such oath state or subscribe any material matter which he does not believe to be true, is guilty of perjury, and shall be fined not more than $2,000 and imprisoned not more than five years. (R. S. § 5392; Mar. 4, 1909, c. 321, § 125, 35 Stat. 1111.)"

5. House Resolution #111 of the House of Representatives, adopted February 26, 1947 (93 Cong. Rec. 1504).

"Resolved, that the Committee on Education and Labor, acting as a whole or by subcommittees, is authorized and directed to conduct thorough studies and investigations relating to matters coming within the jurisdiction of such Committee under Rule XI (1) (g) of the Rules of the House of Representatives, and for such purposes the said Committee or any Subcommittee thereof is hereby authorized to sit

and act during the present Congress at such times and places within the United States, whether the House is in session, has recessed, or has adjourned, to hold such hearings, and to require by subpoena or otherwise the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers and documents, as it deems necessary. Subpoenas may be issued over the signature of the Chairman of the Committee or any member of the Committee designated by him, and may be served by any person designated by such Chairman or member. The Chairman of the Committee or any member thereof may administer oaths to witnesses. That the said Committee shall report to the House of Representatives during the present Congress the results of their studies and investigations with such recommendations for legislation or otherwise, as the Committee deems desirable."

Questions Presented

1. Whether a Congressional Committee is a competent tribunal within the meaning of the United States Code, Title 18, § 231 or the District of Columbia Code, Title 22, § 2501 in the absence of a quorum of such a committee at the time a witness is sworn and at the time a witness testifies.

2. Whether a Congressional Committee, once having duly convened but having thereafter continued to sit without a quorum, is a competent tribunal within the meaning of the United States Code, Title 18, § 231 or the District of Columbia Code, Title 22, § 2501.

3. Whether the presumption of innocence, which attends upon the trial of any criminal charge, overrides any presumption of continuance or presumption of regularity of official records relied upon by the courts below as the basis for holding that a Congressional Committee is a com-

petent tribunal within the meaning of United States Code, Title 18, § 231, or the District of Columbia Code, Title 22, § 2501, if validly convened, irrespective of the absence of a quorum at the time a witness was sworn and at the time a witness testified.

4. Whether a witness may, in a prosecution for perjury before a Congressional Committee, assert as a defense thereto lack of a quorum of the committee at the time he was sworn and at the time he testified though at the time of testifying before the Congressional Committee no point of lack of quorum was made by the witness or any member of the committee.

5. Whether the crime of perjury will lie under the District of Columbia Code, Title 22, § 2501 when predicated on testimony given before a federal legislative tribunal inquiring into matters of general federal importance.

6. Whether members of Congress are authorized to administer oaths within the meaning of the District of Columbia Code, Title 22, § 2501.

7. Whether the Trial Court erred in denying the petitioner's motions to take the deposition of numerous residents of the Eastern District of Wisconsin wherein the petitioner was also resident in the light of the Trial Court's denial of the petitioner's motion to have the government defray the cost of subpoena and witness fees for said numerous witnesses.

8. Whether the investigation of a jury panel by the Federal Bureau of Investigation is unconstitutional in that it denies a fair and impartial trial in a criminal case as guaranteed by the Fifth and Sixth Amendments to the Constitution of the United States.

9. Whether the Trial Court erred in refusing to make available to the petitioner the results of an investigation of the jury panel by the Federal Bureau of Investigation.

10. Whether the Trial Court erred in refusing to permit the petitioner to read to a jury from the transcript of his testimony before a Congressional Committee when that document was received in evidence over petitioner's objections.

The Reasons Relied on for Allowance of the Writ

1. The United States Court of Appeals for the District of Columbia and the District Court for the District of Columbia have decided a question of foremost importance which has not been settled but which should be settled by this Court. The lower courts have held that a Congressional Committee is a competent tribunal within the meaning of the District of Columbia Code, Title 22, Section 2501 in the absence of a quorum of such a committee at the time a witness is sworn and at the time he testified. Moreover, these courts have held that a Congressional Committee once having been duly convened is a competent tribunal within the meaning of the foregoing statute regardless of whether thereafter a quorum was present at the time a witness was sworn and testified. These decisions mean that the existence of a competent tribunal is irrebuttably presumed. Thus the decision results in a total destruction of the presumption of innocence in violation of the due process clause of the Fifth Amendment to the United States Constitution and in conflict with applicable decisions of this Court. *Bailey* v. *Alabama*, 219 U. S. 219; *Oyama* v. *State of California*, 332 U. S. 663; *Maggio* v. *Zeitz*, 333 U. S. 56. In view of the increased scope of Congressional investigation the decisions below are of extreme importance and commend themselves to review by this Court.

2. The United States Court of Appeals for the District of Columbia has held that perjury before a Congressional committee is an offense punishable under the District of Columbia Code. The decision is in conflict with applicable decisions of this Court. *Johnson* v. *United States*, 225 U. S. 405.

3. The United States District Court for the District of Columbia has decided a question relating to the construction of the Fifth and Sixth Amendments to the United States Constitution and to the Federal Rules of Criminal Procedure. Rule 17(b) of said Rules provides that the Court, upon motion or request of an indigent defendant, may order a subpoena to be issued and "if the court or judge orders the subpoena be issued the costs incurred by the process and the fees of the witness so subpoenaed shall be paid in the same manner in which similar costs and fees are paid in case of a witness subpoenaed in behalf of the Government." The petitioner so moved as well as in the alternative for the right to take depositions of witnesses as provided in the Federal Rules of Criminal Procedure, Rule 15(a). The denial of these motions foreclosed the right and ability of the petitioner to present evidence in his own behalf, denied him a fair and impartial trial, and is in conflict with the decision of this Court in *Hyde* v. *Shine*, 199 U. S. 62.

4. The United States Court of Appeals for the District of Columbia has decided a question of the utmost importance relating to the construction of the Fifth and Sixth Amendments to the United States Constitution in that it approved the failure to disqualify a jury panel after, or to give the petitioner the benefit of, investigation of said jury panel by the Federal Bureau of Investigation. Such an investigation impairs the right to a fair and impartial trial in violation of the Fifth and Sixth Amendments to the United States Constitution, especially where Government employees were members of the jury panel and were sub-

sequently enrolled as jurors and where a question of the petitioner's political affiliation and association was involved.

5. The United States District Court for the District of Columbia denied the petitioner the right to read to the jury from the transcript of his testimony before a Congressional committee when the perjured testimony was part of said document and when said document, over objections of the petitioner, was in evidence and when the Government had been accorded the right to read parts of it to the jury. That determination involved a departure by the District Court from the accepted and usual course of judicial proceedings and requires the exercise of this Court's power of supervision. *Tappan* v. *Beardsley*, 77 U. S. 427.

CONCLUSION

For the reasons stated it is respectfully submitted that this Petition for a Writ of Certiorari should be granted.

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Petitioner.

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Of Counsel.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1948

No. ——

HAROLD ROLAND CHRISTOFFEL, *Petitioner*,

v.

UNITED STATES OF AMERICA.

BRIEF IN SUPPORT OF PETITION

Opinion Below

The opinions of the District Court are unreported. The opinion of the United States Court of Appeals for the District of Columbia (R.) is reported at F. 2d .

Jurisdiction

The basis for this Court's jurisdiction is set forth in the Petition at page 9.

Specification of Errors

1. The United States Court of Appeals for the District of Columbia erred in failing to reverse the conviction of the petitioner on the ground that the Trial Court

improperly ruled and charged that a Congressional committee is a competent tribunal within the meaning of the District of Columbia Code, Title 22, Section 2501, in the absence of a quorum of such committee at the time the petitioner was sworn and at the time petitioner testified.

2. The United States Court of Appeals for the District of Columbia erred in failing to reverse the conviction of the petitioner on the ground that the Trial Court improperly ruled and charged that it was immaterial in establishing the competence of a Congressional committee as a tribunal within the meaning of the District of Columbia Code, Title 22, Section 2501, whether there was a quorum of said committee in attendance at the time the petitioner was sworn and testified so long as the Congressional committee had been duly convened.

3. The United States Court of Appeals for the District of Columbia erred in failing to reverse the conviction of the petitioner on the ground that the Trial Court by its ruling and charge improperly determined that the competence of a Congressional committee as a tribunal within the meaning of the District of Columbia Code, Title 22, Section 2501, was irrebutably presumed thus unconstitutionally eliminating the presumption of innocence which attended the petitioner and foreclosing from consideration of the jury the proof on the subject of a lack of quorum.

4. The United States Court of Appeals for the District of Columbia erred in failing to reverse the conviction of the petitioner on the ground that the petitioner had no standing before a Congressional committee to raise the point of no quorum though the petitioner was not a member of that body.

5. The United States Court of Appeals for the District of Columbia erred in failing to reverse the convic-

tion of the petitioner on the ground that he was improperly indicted and tried under the District of Columbia Code, Title 22, Section 2501.

6. The United States Court of Appeals for the District of Columbia erred in failing to reverse the conviction of the petitioner on the ground that the administration of the oath to the petitioner was un-authorized.

7. The United States Court of Appeals for the District of Columbia erred in failing to reverse the conviction of the petitioner on the ground that the investigation of the jury panel by the Federal Bureau of Investigation and the failure to make available to the petitioner the results of such investigation was an unconstitutional denial of the fair and impartial trial guaranteed to the petitioner by the Fifth and Sixth Amendments to the Constitution of the United States.

Other specifications of error are set out in detail in the Questions Presented in the petition.

Summary of Argument

False testimony does not constitute perjury within the meaning of the District of Columbia Code, Title 22, Section 2501, unless adduced before a competent tribunal. The tribunal before which the petitioner testified was a standing committee of the House of Representatives consisting of twenty-five members. To establish the crime of perjury it was incumbent upon the Government to prove beyond a reasonable doubt that a quorum of the committee was actually present when the petitioner was sworn and testified. The ruling and charge of the Trial Court, approved by United States Court of Appeals for the District of Columbia, improperly holds that a Congressional committee is a competent tribunal within the meaning of the perjury statute irrespective of the presence of a quorum at

the time the petitioner was sworn and testified if said committee was duly convened. However, no precedent of this or any other Court supports such a determination. On the contrary, all authorities proceed from the proposition that the act of or before a multiple member tribunal is valid only if a quorum thereof was present at the time of the act in issue. By their rulings the courts below created an irrebutable presumption that the House Committee was a competent tribunal within the meaning of the perjury statute, thus unconstitutionally eliminating the presumption of innocence and foreclosing the right of the petitioner to prove lack of competency. In addition the determinations below are predicated on the mistaken notion that one not a member of the House Committee has standing to raise a point of lack of quorum. Furthermore, to the extent that the rulings below were predicated on a theory that the petitioner sought to improperly impeach the committee hearing they were in error. In the first instance the petitioner did not assail the validity of any legislative function of the committee by proving lack of a quorum, and in the second place impeachment of the committee hearing for the purpose of establishing a defense to a criminal charge, either by official records or by extrinsic evidence, is proper.

The petitioner gave testimony before a federal body engaged in hearings on matters of general federal importance. False testimony before such a committee, if it was an offense at all, was an offense solely against the public justice of the United States and in no way offended against the local sovereignty. The federal perjury statute and the local perjury statute while existing together have separate spheres of operation and the petitioner did not offend against the local statute. Moreover, no local statute authorized the administration of an oath to the petitioner by a federal officer and consequently an essential element of the crime of perjury was unproved.

Petitioner was denied a fair and impartial trial because the rulings of the Trial Court foreclosed the presentation

of evidence in his own behalf in violation of the Fifth and Sixth Amendments to the Constitution of the United States in that the Trial Court denied the petitioner's motion for the Government to subpoena and pay for the costs of bringing witnesses from a distant city to the trial forum and denied the alternative motion for the taking of said witnesses' depositions.

Moreover the petitioner was denied a fair and impartial trial by the determination below approving the denial of petitioner's motion to disqualify the jury panel when the same had been investigated by the Federal Bureau of Investigation on the eve of trial and the results thereof not furnished to the petitioner though Government employees were members of the jury and subject to the operation of Executive Order #9835 and the issue upon which they were to pass was the question of the petitioner's political ideology, activity and associations.

Furthermore the petitioner was denied a fair and impartial trial by the Trial Court's denial of his right to read to the jury from his own testimony before the House Committee when the transcript of such testimony, over objection, was received in evidence, and when the Government had been afforded the opportunity to read from it.

POINT I

The Court of Appeals for the District of Columbia committed reversible error in affirming the ruling and charge of the Trial Court concerning the competency of the House Committee at the time the petitioner was sworn and testified.

An analysis of the record herein discloses that as the evidence progressively tended to establish the lack of a quorum of the House Committee or to rebut any presump-

tion of quorum, the Trial Court *pari passu* made the presumption irrebutable. The United States Court of Appeals for the District of Columbia affirmed in the following language:

> "We hold only that a hearing before a regularly convened Congressional committee, appearing from the committee's record to be regularly conducted, and later recognized, as this hearing was, by the committee and by the House, cannot afterwards be impeached, for the benefit of a defendant who did not at the time question its regularity, by showing that a quorum was not in fact present when he gave false testimony. So much, we think, is required by a reasonable regard for the substance of being, and by the respect Courts owe to Congress" (*Christoffel* v. *U. S.*, F. 2d).

The Trial Judge refused to submit to the jury the question of whether or not there was a quorum of the House Committee present at the time the petitioner was sworn and testified and instead charged as indicated hereinabove at page 7. It is the contention of the petitioner that the courts below erred herein.

A. An analysis of the evidence reveals that there was ample basis for the jury to conclude that a quorum of the House Committee was not in attendance at the time the petitioner was sworn and testified

None of the documentary evidence adduced below by the Government showed that as many as the necessary thirteen members of the House Committee were present at the time in issue. Government Exhibit 4 (R. 37) showed only those present at the beginning of the afternoon session on March 1, 1947 (R. 38); Government Exhibit 5 (R. 41), part of the Journal of the House Committee, purported to show only who was present "during the afternoon and the morning of March 1, 1947" (R. 39) but did

not reflect which Committee members were present at any particular time (R. 45).

The Government did attempt to prove the number of members of Congress who were present at the time the petitioner was sworn. Thus the subject was raised on direct examination of the Clerk of the Committee as follows:

> "Q. Were you present at the time the defendant Christoffel was sworn by the Chairman? A. I was.
> Q. Do you know how many members were present at that time? A. No, I could not vouch for that. I do know—" (R. 38).

The same witness, on direct examination, could not state how many members of the Committee were present when the petitioner testified (R. 42).

Congressman Hartley, the Chairman of the Committee, believed that a quorum of the Committee was present at the time the petitioner was examined (R. 89). Other Congressmen questioned on the subject could give no direct evidence but were vague and uncertain on the subject (R. 164, 175, 176, 200, 222, 233).

A number of things are clear however. To begin with, the oral testimony demonstrated that Congressmen go in and out of committee meetings frequently. It was true on the afternoon of March 1, 1947 (R. 39-40, 148, 194, 231).

The precise time at which the petitioner testified was important. Although the estimates of the hour at which Christoffel took the witness chair vary, there seems to be no dispute that it was some time after 3:30 on Saturday afternoon. Martin C. Smith, the shorthand reporter, testified that he did not start reporting the afternoon session until that hour (R. 74) and the session was concluded "before 5 o'clock" (R. 76).

The Clerk of the Committee conceded that the petitioner's testimony before the Committee took place at some time between 4:30 and 5 o'clock that afternoon (R. 52) and Congressman Hartley established the hour at about 4 o'clock (R. 100). Other Congressmen were in substantial agreement and placed the testimony late in the afternoon (R. 160, 175, 192, 199, 222).

There was no formal roll call of the Committee members (R. 44). However, all the witnesses were in agreement as to the existence of a regular procedure which was followed in Committee meetings and in the questioning of witnesses. This regular procedure actually called the roll and registered the attendance in the official transcript of the House Committee's hearings (Government Exhibit No. 6; R. 141).

The procedure was explained by the Committee Clerk (R. 53-65). It consisted of calling upon each Republican Congressman in order of seniority and then similarly upon each Democratic Congressman. Both the Clerk of the Committee and the Chairman indicated that the latter was very meticulous in following this regular procedure (R. 55, 89, 90, 107). Congressman Hartley testified:

> "Q. Did you follow that procedure on Saturday? A. I think I must have followed it just as religiously as I did at every hearing.
>
> Q. You followed that religiously? A. Quite regularly; yes" (R. 90).

The Chairman also noted that he usually called on all Congressmen who were present in this fashion although sometimes he might not recognize a Congressman by name because of having received some informal indication of a particular Congressman's desire to be passed in the questioning (R. 90-91). However, it is clear that on the afternoon of March 1st no Congressman gave any such informal instruction to the Chairman (R. 94, 178).

The regular procedure constituted a roll call (R. 58) and Congressman Hartley so testified:

> "Q. In other words, with reference to each of these witnesses, you had what amounted in effect to a roll call? A. Yes, I think that might be a clear assumption.
>
> Q. That is a fair statement? A. Yes." (R. 91).

This roll call is direct evidence of the number of Congressmen present at any particular time that attendance was established in this fashion.

The record below discloses that such a roll call was taken on the afternoon of Saturday, March 1, 1947. The occasion was the testimony of Mr. Thomas, who immediately preceded the petitioner on the stand.

> "Q. Now, let's look at the afternoon session. Now, the witness who immediately preceded Mr. Christoffel was Mr. Thomas; that's correct, isn't it? A. That's right.
>
> Q. And on Mr. Thomas there was one of these go-arounds, one of these roll calls, in effect. A. That's right" (R. 64).

This testimony by the Clerk of the Committee was subsequently confirmed by the testimony of the Chairman of the Committee (R. 92).

There is no evidence in the record disputing the fact that such a roll call did in fact take place late that afternoon. Moreover, it is clear from the testimony that this was the *only* roll call which took place on that afternoon. It took place "somewhere between 3:30 and a quarter to 4" and just prior to the advent of the petitioner for examination by the Committee (R. 92).

An analysis of Government Exhibit 6 discloses that on this call of the roll only eleven members of the House Committee were present although thirteen constituted a quorum. The Chairman of the Committee confirmed that

Government Exhibit 6 disclosed only eleven members present at the time of the call of the roll (R. 97). Confronted by the official documentary evidence of an absence of a quorum both the witness McArthur and the witness Hartley attempted explanations. The latter, for instance, stated:

> "A. This record may indicate that, but as I said before, there are times, and I qualified it by saying, there are exceptions, when I may have taken a nod from a Committee member to indicate he didn't have any questions, and probably didn't call upon him, . . ." (R. 97).

However, despite this effort to explain away the clear evidence of lack of quorum, the witness had previously been committed to the statement that no Congressman indicated that he wished to be passed that afternoon (R. 94). Subsequently the Chairman stated:

> "It says on the record, which I have before me, and I have little doubt but they were the members identified in this record, were the members who were present" (R. 103).

When Chairman Hartley insisted that others must have been present the following dilemma was presented:

> "Q. Do you know of any others who were present at that time, other than ones you called upon? A. Definitely, no. I can't identify them definitely.
>
> Q. If they had been present, you would have called upon them, wouldn't you? A. Most likely I would have.
>
> . . . . . .
>
> Q. At the time of Thomas were there ten and yourself present? A. That's right.
>
> Q. And then we go to Christoffel. A. That's right.
>
> Mr. Pratt: I object to that inference, that those were the only members present.

The Court: He did not testify those were the only ones present.

By Mr. Rogge:

Q. We know at the time that Thomas testified that ten members and yourself were present, and you don't know of any additional members who were there, do you? A. Positively I can't identify any others although I feel certain that there must have been a quorum present, but based on this record, apparently, there were ten and myself at the time Mr. Thomas was questioned.

Q. In other words, based on that record, and as you stated, although you tried to keep a quorum, but based on that record, can't you tell us that at the time of the questioning of Mr. Thomas there wasn't a quorum present? A. With definiteness, I could not say that. I can't say that there wasn't a quorum present, although this record indicates that there were just ten and myself" (R. 103-4).

This testimony is the only testimony offered through Congressmen as to the attendance of the Committee members that afternoon. Indeed, in view of the rulings of the Court thereafter, no effort was even made to show who was present at the time that Thomas testified or at the time that Christoffel testified. The Government failed to make this effort despite the fact that each and every Congressman supposed to have been present at the outset of the afternoon session testified on the trial.

However, there was additional and uncontradicted testimony which confirmed the evidence given by Congressman Hartley and recorded in Government Exhibit 6.

Fred McStroul was present on March 1, 1947 when the House Committee was holding its session (R. 142) and on Saturday afternoon when the petitioner testified (R. 142).

McStroul confirmed the fact that Christoffel began his statement somewhere about 4 o'clock in the afternoon (R. 142). The witness then testified in answer to questions

by counsel and the Court that Congressman Lesinsky, one of those shown to be present at the beginning of the session (Government Exhibit 4), was absent at the time that Christoffel was undergoing questioning by Congressman Hoffman.

> "The Witness: All I can say is that there was a time I wanted to send a note to Mr. Lesinsky . . . and he wasn't there.
>
> *By Mr. Rogge:*
>
> Q. When you say he wasn't there, whom do you mean? A. Mr. Lesinsky" (R. 143).

Thereafter the witness testified that except for Congressman Kennedy the Democratic side of the Committee was empty (R. 147).

But the testimony of McStroul went further. After indicating the basis for his recollection, *McStroul testified that at the time petitioner was being questioned there were only nine Congressmen present.* (R. 149), and when the meeting adjourned "around 5 o'clock, whenever it was," there was just a handfull of the Congressmen present.

> "Q. How many? A. Oh, less than seven; that I am fairly sure of.
>
> By the Court: Six?
>
> A. About six" (R. 150).

B. It was incumbent upon the Government to prove that a quorum of the House Committee was actually present when the petitioner was sworn and testified

Neither the Trial Court, the Government nor the United States Court of Appeals for the District of Columbia has cited any authority for the novel and extraordinary proposition of law which this Court is now respectfully asked to pass upon.

Every authority examined by the petitioner proceeds from the proposition that the act of or before a multiple member agency—including Congressional committees—is valid only if a quorum thereof was present *at the time of the act in issue;* it nowhere appears that a quorum at some other earlier time validates a subsequent act made or taken in the absence of a quorum.

Thus, on May 17, 1918 the question arose as to whether a quorum of the House Committee on Territories had been present at a meeting called to consider a pending bill. The following exchange took place on the floor of the House:

> "Mr. Houston: The committee was called and met, and six or seven members were in the room at a time—I am not sure of just the number. It requires nine to make a quorum. There were not nine present in the room *at any given time, but they came into the room, cast their vote, told how they wanted to be recorded, and went to attend to their business. There was an attendance of a quorum: they were not all present in the room at any one time . . .*
>
> "The Speaker: The chair does not think that is a committee meeting. On pages 396 and 397 of the Rule Book, beginning on page 395, the chair rendered an elaborate opinion on the very same subject matter, after a most careful scrutiny and consideration. *A committee sits as a unit* and you cannot get a bill up here by getting your report signed by various members of the committee or any other way except by a formal vote of the committee as a committee, a quorum being present, if anybody insists on the rule" (italics added) (56 Cong. Rec. 6689).

Another member then objected:

> "*This is the way this thing is done in almost every committee of the House at some time.* A meeting is regularly called. The Chairman is present. The members of the committee begin to come in, one after another, *some remaining and others*

asking to be recorded as present. Finally the vote shows that a quorum is present though actually a quorum may not be physically present. The point of no quorum is not made in the committee and the business of the committee is proceeded with. *According to the committee records, a quorum is physically present. That evidence of the record ought not to be assailed in this body, but should be regarded as final. We do business in the House and Committee of the Whole every day without a quorum, but a quorum is presumed to be present . . .*

"The Speaker: Now it may be true and I have no sort of doubt it is absolutely true . . . that this process of one coming in and another dropping out goes on in these committees. *That is all right as nobody raises the point, but when the point is raised you have to consider it according to the rule . . . When the point is raised you have got to have a quorum acting as a quorum"* (italics added) (56 Cong. Rec. 6689).

This statement did not satisfy the various objections but the matter was concluded by this ruling of the Speaker of the House:

". . . My mind is made up and it will never be changed, unless the House votes to overrule my decision" (56 Cong. Rec. 6690).

Accord: III Hinds' *Precedents*, Section 1774 cited in Jefferson's *Manual*, Section 409; *Rules and Manual of the House of Representatives* (1947); June 17, 1922, *62 Cong. Rec. 8928*; August 20, 1912, *48 Cong. Rec. 11399*; *Legislative Reorganization Act of 1946*, Part 3, Section 133 (d).

Similarly, it is the rule in the various state legislative bodies that a multiple member committee can perform no valid act unless a quorum is present. *Ralls* v. *Wyand*, 40 Okl. 323, 388; *State ex rel. Stanford* v. *Ellington*, 117

N. C. 158; *Questions Submitted to Justices of the Supreme Judicial Court of Maine*, 70 Me. 570, 588-9. In cases involving judicial tribunals which consist of more than one Judge the question of what constitutes "the court" frequently depends on what constitutes a quorum. Three Judge statutory Courts sitting under the authority of 28 U. S. C. § 380 and 380a have no jurisdiction and can hear no application unless a quorum of the Justices of said Court are actually sitting. *Ayrshire Collieries Corp.* v. *U. S.*, 311 U. S. 132; *Stratton* v. *St. Louis Southwestern Ry. Co.*, 282 U. S. 10; *Cumberland Telephone & Telegraph Co.* v. *Louisiana Public Service Commission*, 260 U. S. 212; *Ex Parte Metropolitan Water Co.*, 220 U. S. 539; *Baltimore & Ohio Railroad Co.* v. *Lambert Run Coal Co.*, 267 F. 776 (C. C. A.). In none of these cases is there a suggestion that the presence of a quorum at some earlier time or during a prior hearing or argument invests the Court with a competency to hear a subsequent case irrespective of the actual presence of a quorum at that subsequent hearing.

The rule in State Courts and semi-judicial bodies is the same. *Furgeson* v. *Crittenden County*, 6 Ark. 479; *Trise* v. *Crittenden County*, 7 Ark. 159; *People* v. *Barbour*, 9 Calif. 230; *Jagger* v. *Coon*, 5 Mich. 31; *State of Missouri ex rel. Clark* v. *Sanders*, 69 Mo. App. 472; *West* v. *Burke*, 60 Texas 51; *Ex Parte Buistamente*, 138 Texas C. R. 396; *Olson* v. *State Tax Commission*, 109 Utah 563; *State ex rel. Hughes* v. *King*, 27 N. C. 203.

One venerable decision holds:

> "If two justices could not legally hold a court of Special Sessions, but took three to constitute such court, then the trial, conviction and commitment of the prisoner was absolutely void, for then the alleged court that tried and sentenced him was not a court, and the two justices who tried and sentenced him had no jurisdiction whatever, and the prisoner was and is unlawfully imprisoned." *In the Matter of*

James Divin, 21 Howard's Practice Reports 80 (New York 1860).

Authorities to the same effect in cases involving municipal boards, councils and similar bodies are numerous and only a geographical cross-section is here cited. *Joslyn* v. *County Commissioners of Franklin County*, 15 Gray (81 Mass. 567); *State* v. *Porter*, 113 Ind. 79; *City of Somerset* v. *Somerset Banking Co.*, 109 Ky. 549; *City of Bentwood* v. *Wheeling Railway Co.*, 52 W. Va. 465; *McLean* v. *City of St. Louis*, 222 Ill. 510; *Commonwealth* v. *Garney*, 217 Pa. 425; *Greene* v. *Goodwin Sand & Gravel Co.*, 129 N. Y. Supp. 709; *Reynolds County Telephone Company* v. *City of Piedmont*, 152 Mo. App. 361; *State* v. *Farrar*, 89 W. Va. 232.

More particularly, it has been held that untruthful testimony before a multiple member tribunal is not perjurious unless given before a quorum thereof.

The first time the problem arose in this country appears to have been in the case of *Conner* v. *Commonwealth*, 4 Va. Rep. 30 (2 Va. Cas. 30). The defendant in that case had been indicted for perjury, it being alleged that he had perjured himself before a Regimental Court of Enquiry. He sought a writ of error on the grounds that the indictment did not set forth that the defendant was properly examined as to the matters alleged in the indictment. This writ of error was allowed on the theory that the defendant could not be examined unless a quorum was present. As the Court stated (p. 33):

> "It seems to the Court here that said judgment is erroneous in this, that it does not appear from the said indictment of what number of officers the said Court of Enquiry consisted . . . so as to enable the Superior Court to discern whether the said Court of Enquiry was or was not constituted according to Law."

In a case involving the similar crime of impeding and corrupting justice the same rationale is approved. *State of Vermont* v. *Freeman*, 15 Vt. 722, 727.

Later affirmation of the principles established by the foregoing cases are found in *Rex* v. *Allen* (1925), 1 D. L. R. 57 (Manitoba K. B.); *Rex* v. *Rulofson* (1908), 14 Can. C. C. 253; and *Regina* v. *Lloyd* (1887), 19 Q. B. D. 213.

In *Rex* v. *Allen*, *supra*, the precise issue involved in the instant case was raised. The defendant was charged with committing perjury. His testimony could constitute perjury only if two specified officials were present upon his examination. The evidence showed that the perjury was committed in the presence of only one of those officials, *the other having left the room during the examination.* The Manitoba King's Bench held that the absence of one of the officials, at the time of testimony in issue, was fatal to the prosecution. The circumstance that at some prior time a competent tribunal had been constituted did not affect the foregoing conclusion. *Rex* v. *Rulofson*, *supra*, and *Regina* v. *Lloyd*, *supra*, are to the same effect.

The most recent affirmation of the proposition that false testimony before a Congressional Committee is not perjurious unless given before a quorum appears in *Meyers* v. *United States* (F. 2d). In that case the majority opinion contains the following:

> "On October 6, 1947, however, only two Senators were present at the hearing. Since they were a minority of the sub-committee, they could not legally function except to adjourn. For that reason the testimony . . . given on that day cannot be considered as perjury . . . ."

The charge in the unreported case of *United States* v. *Stewart* (Dist. Ct., Dist. of Columbia, November 20, 1928, crim. no. 47138) relied upon by the United States Court of Appeals for the District of Columbia in its affirming opin-

ion and referred to in 6 Cannon's *Precedents*, § 345, is upon analysis authority for the petitioner rather than the Government.*

The juxtaposition of that charge and the charge given herein reveals an identity of language in every respect which is here *un*important and a difference in language in the sole respect of consequence.

The difference in language between the two charges are as follows:

a. Twice adding to the *Christoffel* charge a phrase which does not appear in the *Stewart* charge, to wit, "at the beginning of the afternoon session. . . ."

b. Changing "but before the oath was administered" to "provided that before the oath was administered."

An analysis of the language in the *Stewart* charge conclusively demonstrates that an indictment for perjury will not lie unless it is proved that the oath was administered and the testimony taken in the physical presence of a quorum of the House Committee.

The *Stewart* charge clearly requires a quorum to be present at some time. The question remains, "When must the quorum be present?"

Assume *arguendo* that a quorum of a committee of the House of Representatives met and that the first order of business was the hearing of testimony.

* The charge in that case read:

"In this case, the Committee being composed of fifteen, before there could be a meeting of the Committee there must have been present at least eight members of that Committee, physically in the Committee room.

If such a Committee so met, and thereafter during the progress of the hearing some of them left temporarily or otherwise, no question was raised as to the lack of quorum, then the fact that the majority did not remain there, would not affect, for the purpose of this case, the existence of that Committee as a competent tribunal, but before the oath was administered, and before the testimony was given, there must have been as many as eight members of that Committee present."

The *Stewart* charge and all authorities recognize that before the committee could validly meet a quorum had to be actually and physically present. That circumstance being here assumed, one part of the *Stewart* charge hereinabove quoted is entirely unnecessary. Under the hypothesis it would not be necessary to charge as did Judge BAILEY in the *Stewart* case that "but before the oath was administered and before the testimony of the defendant was given there must have been as many as eight members of that committee present." By hypothesis the quorum existed at the time the witness assumed the chair.

Thus the appearance of these words in the charge must contemplate a situation where a committee meets and the first order of business is something other than the testimony of witnesses. Under such circumstances the language above noted would no longer be superfluous and its meaning becomes clear.

In the latter case, if a committee met and a quorum was actually physically present it would not affect the transaction of the committee's business if some members of that quorum left the room provided always that no point of lack of quorum was raised. However, if the committee advanced in its agenda and sought to take testimony from witnesses it could do so only if "before the oath was administered and before the testimony . . . was given" a quorum was present.

Viewed in this light the *Stewart* charge clearly means but one thing, namely, that perjury can lie only when the oath is administered and the testimony taken before an actual quorum of members of the committee.

To the question "When must the quorum be present?", there is another confirming answer. The *Stewart* charge states that "before the oath was administered *and* before the testimony of the defendant was given there must have been [a quorum] of that committee present." If by this

language it was meant to say that it was sufficient to have a quorum present at some time prior to the administration of the oath then the statement that a quorum had to be present before the testimony was taken is absolutely unnecessary. In the sequence of events every moment in time prior to the administration of the oath is also prior to the taking of testimony. The *Stewart* charge then is clear. Not only must a quorum be present before the oath is administered but *after* as well since a quorum must be present before the taking of testimony and this occurs after the administration of the oath.

This analysis of the language of the *Stewart* charge is confirmed by the very authority upon which the Government and the Appellate Court below rely. In 6 *Cannon's Precedents* of the House of Representatives, Section 345 appears the following:

> "345. The case of Robert W. Stewart, continued.
>
> In order to support a charge of perjury it must be shown that a quorum of the committee of investigation was present *at the time the offense was committed*" (p. 491). (Italics added.)

The time when the offense is committed is the time when the oath is administered and violated by false testimony.

The question posed herein, especially in view of the increased scope of Congressional investigation, is one of general importance, which this Court has not yet passed upon and which, it is respectfully submitted, should be clarified. In addition, as hereinafter appears, this case presents an important question relating to the due process clause of the Fifth Amendment to the United States Constitution and to its application.

C. The presumption of innocence which attends upon the trial of any criminal charge overrides any presumption of continuance or of the regularity of official records; the latter presumptions are rebuttable

In holding that a hearing before a regularly convened Congressional committee ("appearing from the committee's record to be regularly conducted") cannot be impeached, the United States Court of Appeals for the District of Columbia stated "so much, we think, is required by a reasonable regard for the substance of things and by the respect courts owe to Congress." This language of the decision in effect affirms the conviction herein on the theory that the hearing before the Congressional committee is irrebuttably presumed to be regular.

Such was the theory of the Trial Court except that during the early part of the trial the presumption relied upon was a rebuttable one (R. 72-83). Finally, however, the Court ruled (R. 173-175) and charged (R. 259) in effect that the presumption was irrebuttable.

If the presumption relied upon was one of continuance then at best it must be regarded as rebuttable (*Lewis* v. *Hawkins*, 90 U. S. 119) and if the presumption was one of regularity of official conduct then reliance upon it is limited (IX Wigmore *On Evidence*, § 2534) and it is likewise rebuttable (*Wilkes* v. *Dinsmon*, 48 U. S. 89; *New York Life Ins. Co.* v. *Gamer*, 303 U. S. 161, 170; *Hammond* v. *Hull*, 131 Fed. 2d 23, *cert. den.* 318 U. S. 777).

To the extent that the Trial Court ruled and the Appellate Court held that a "reasonable regard for the substance of things and . . . the respect courts owe to Congress . . . injures no private interest . . ." it erred. This Court has recently passed upon similar irrebuttable presumptions which in effect deny due process of law and has stricken them down. *Maggio* v. *Zeitz*, 333 U. S. 56. See

also *Oyama* v. *State of California*, 332 U. S. 633; *Bailey* v. *Alabama*, 219 U. S. 219, 223. The rationale of these decisions is that "a constitutional prohibition cannot be transgressed indirectly . . ." In making the presumption herein irrebuttable the Court below stripped the petitioner of the constitutional protection inherent in the presumption of innocence,—a valuable private right.

If the presumption relied upon below was rebuttable, then 1) the presumption of innocence overcame it and 2) the proof herein previously alluded to should have been submitted to the jury in order to effect rebuttal.

The charge of the Trial Court and the affirmance of the Appellate Court result in a flagrant cancellation of the presumption of innocence. This Court should take cognizance of this assault upon a right protected by the Constitution and, it is respectfully submitted, grant the petition.

D. A witness who is not a member of a Congressional committee has no standing before the committee to raise a point of lack of quorum

The United States Court of Appeals for the District of Columbia has, to some extent, predicated its affirmance of the Trial Court's refusal to submit the quorum question to the jury on the mistaken notion that a witness who is not a member of the Congressional committee has standing at the time to question the regularity of the Committee's meeting. Thus, it ruled:

> "We hold only that a hearing before a regularly convened Congressional committee, . . . cannot afterwards be impeached, for the benefit *of a defendant who did not at the time question its regularity*, by showing that a quorum was not in fact present when he gave false testimony" (*Christoffel* v. *U. S.*, Fed. 2d). (Italics added.)

The Rules of the House of Representatives are the Rules of its standing committees (Rules of the House of Representatives, Rules and Manuals of the United States House of Representatives (1947)). Section 310 of Jefferson's *Manual, Rules and Manual of the United States House of Representatives* (1947), on the question of quorum, reads:

> "And whenever, during business, it is observed that a quorum is not present, *any member* may call for the House to be counted, and being found deficient business is suspended (2 *Hats.* 125, 126)." (Italics added.)

Thus the rules applicable to the conduct of Congressional committee hearings endow members but not strangers to the body with standing to raise this or other matters of procedure (and see 56 Cong. Rec. 6689). Nor does the logic of the situation permit an attack on an official body from without. Indeed the Department of Justice in its brief filed with the Appellate Court below acknowledged that

> "Congressional legislative bodies operate under parliamentary rules by which they themselves determine the validity of their own proceedings. Under the parliamentary procedure of the House of Representatives a meeting of the House or of a committee thereof once duly convened may continue to transact business and consider matters before it until recess or adjournment unless the absence of a quorum is officially noted by the chairman *upon the suggestion of a member* rising to a point of order or as the result of an official roll call" (*Christoffel* v. *United States*, No. 9788, in the United States Court of Appeals for the District of Columbia; Brief for Appellee, p. 6). (Italics added.)

It is proper to limit to members of a legislative body standing to raise such a point of order. Otherwise non-members of the body, not acquainted with the rules of the

body and ignorant of what constitutes a quorum, while testifying and simultaneously maintaining a perpetual mental inventory of the members of the committee present (perhaps differing from that of the Chairman or the Clerk of the Committee) would be in a position to challenge and indeed paralyze the regularity and conduct of committee hearings.

If as appears then a witness has no standing "at the time [to] question [a hearing's] regularity, by showing that a quorum was not in fact present when he gave false testimony," it follows that the predicate of the affirmance below falls.

In a decision of the United States Court of Appeals for the District of Columbia made two weeks preceding the affirmance and conviction herein, no such prerequisite to declaring the incompetency of a similar tribunal was noted. In *Meyers* v. *United States*, . Fed. 2d , that Court held:

> "On October 6, 1947, however, only two Senators were present at the hearing. Since they were a minority of the sub-committee, they could not legally function except to adjourn. For that reason the testimony given on that day cannot be considered as perjury . . . nor can appellant be convicted of suborning it."

The appellant there was not charged with perjury but with suborning perjury. There was no evidence that he was present at the hearings nor evidence that he or the alleged perjurer raised the point of lack of quorum. Nevertheless the Court of Appeals held that a minority of the sub-committee could not legally function.

E. The petitioner did not seek to impeach the committee hearings; had he attempted to do so, even by extrinsic evidence, it would have been proper in the defense of a criminal charge

The Trial Court did not base its charge or its refusal to permit the jury to pass upon the question of quorum on any theory of impeachment. This thesis was first projected by the Government on appeal and apparently there adopted. Under the ruling of the Trial Court, proof of the absence or presence of a quorum at the time in issue, whether by evidence which impeached committee records or indeed by the official records themselves, was not to be considered by the jury since the Trial Judge regarded such evidence as immaterial (R. 174, 259).

The petitioner sought to prove the absence of quorum not only by extrinsic evidence but by official records as well (Government Exhibit 6; R. 141).

The extrinsic evidence that was adduced upon the trial was not objected to by the Government, nor was it used to impeach the committee records or the hearings. No attack was then or subsequently made on the validity of the committee's report to the full House or on the Taft-Hartley Law which resulted.

The extrinsic evidence was used only to establish an adequate defense to a criminal charge. To the extent that committee hearings had to be impeached in order to establish the defense, it was permissible. Thus in *United States* v. *Walsh*, 22 Fed. 644, it was expressly held that the official record involved could be impeached by a special legal proceeding which is unfortunately not available in the instant case.

Moreover, to make such a defense available it was proper in a criminal prosecution to impeach committee records by proof *aliunde* said records.

The subject was discussed in the decision of *In the Matter of James Devine*, 21 Howard's Practice Reports 80 (N. Y. 1860). This was the case of a prisoner convicted of perjury. He was brought before the Court on a Writ of Habeas Corpus and there offered proof *aliunde* the Commitment to show that it was fatally defective because only two of the required three Justices were in attendance. Quoting from the decision:

> "These proofs were objected to by the Assistant District Attorney on the ground that . . . I could not go behind the Commitment; . . . and [it] could not be impeached . . .
>
> The questions then are—1st. Has the prisoner a right . . . thus to impeach the Commitment? . . .
>
> I think the questions must be answered in the prisoner's favor . . ." (21 Howard's Practice Reports 80, 81).

The Court then asks:

> ". . . how could the prisoner . . . show that the court was illegally constituted and had no jurisdiction, except in the way he has done by proof *aliunde* the writ or Commitment?
>
> The prisoner could hardly estop himself from the right of showing *at any time*, and *at all times*, a total want of jurisdiction." (21 Howard's Practice Reports 80, 81.) (Italics added.)

Therefore, to the extent that the petitioner did not on trial seek to impeach the House Committee records, the United States Court of Appeals for the District of Columbia was in error in premising its decision on a misconception of fact. And to the extent that the petitioner utilized extrinsic evidence to impeach House Committee records, the Appellate Court was in error because said evidence was in aid of a defense to a criminal charge.

POINT II

The Court of Appeals for the District of Columbia committed reversible error in affirming the conviction of petitioner for violation of the District of Columbia Criminal Code.

That the petitioner herein was indicted, tried, convicted and sentenced for a violation of Section 22-2501 of the District of Columbia Criminal Code is certain. The indictment was drawn under that local statute (R. 1), the docket entries reflect it (R. 28), the Trial Court so charged (R. 256) and the sentence imposed confirms it (R. 28, 272). In his motion to dismiss the indictment (R. 8-9), in his requests to charge (R. 267), and in his motion for acquittal and new trial (R. 23-24), and on appeal (*Christoffel* v. *U. S.*, F. 2d), petitioner has consistently but unsuccessfully contended that the allegations of the indictment did not constitute a crime under Title 22, Section 2501 of the District of Columbia Criminal Code. Petitioner submits that in permitting this course of events to unfold the lower Courts committed serious, prejudicial and reversible error.

The United States Court of Appeals for the District of Columbia, in affirming, stated as follows:

> "Appellant says the indictment was drawn and the sentence imposed under the perjury statute in the District of Columbia Code, D. C. Code (1940) § 22-2501. He contends that perjury before a Congressional committee is punishable only under the perjury statute in the Federal Criminal Code, 18 U. S. C. § 231 (now section 1621). Since this case was argued, this Court has decided the contrary." *Christoffel* v. *United States*, F. 2d

For this proposition, the United States Court of Appeals for the District of Columbia has cited *Meyers* v.

United States, F. 2d . There the Court simply stated:

> "In other words, appellant says only the federal perjury statute, 18 U. S. C. A. §§ 231, 232, was applicable. To accept the argument would be to overrule our decisions in *O'Brien* v. *United States*, 69 App. D. C. 135, 99 Fed. 2d 368 (1938) and *Bhrle* v. *United States*, 69 App. D. C. 304, 100 Fed. 2d 714 (1938), which we are not prepared to do." *Meyers* v. *United States*, *supra*, at .

The District Code is a complete codification of the laws applicable to the District of Columbia. *Sims* v. *Rives*, 66 App. D. C. 24, 84 F. (2) 871, *cert. den.* 298 U. S. 682. The crime for which the petitioner stood trial and for which he was convicted and sentenced is part of it. The provisions of that Code which authorize the administration of an oath in the District of Columbia are numerous and specific.

The Corporation Counsel, his assistants, the Clerk of the District Court, the Police Court Clerks, the Police and Juvenile Court Judges, the Commissioners of the District, the Mayor, the Superintendent of Police, Notaries Public, the Police Department Trial Board Chairman and the Justices of the United States District Court are all specifically authorized by the District Code to administer oaths (Titles 1, 4, 11, District of Columbia Code).

Some of these officials also are otherwise authorized to administer other oaths. For instance the Judges and Clerk of the United States District Court are authorized by a law of the United States to administer oaths in addition to those authorized to them by the District Code (28 U. S. C. A. § 385; R. S. § 725; March 3, 1911).

Significantly, the members of Congress who enacted the District Code did not see fit to authorize the members of its own body to administer an oath under the District Code.

Since those authorized were all locally resident and official engaged, and Congressmen are not, the omission to authorize the latter would seem to be purposeful and reasonable.

Thus, though members of Congress are generally authorized to administer oaths (2 U. S. C. A. § 191), and though some members of Congress are specially authorized to administer oaths in Washington, D. C., and elsewhere (Resolution 111), none are authorized under the District Code. Congressmen are authorized by a "law of the United States" (2 U. S. C. A. § 231) but are not authorized "in any case in which the law authorized such an oath" (Section 22-2501 D. C. Crim. Code). This places Congressmen generally, and Chairman Hartley particularly, in the position of "one who had authority to administer certain oaths, but not the one in question" (48 *Corp. Jur.*, p. 856).

Under such circumstances an oath administered by Chairman Hartley could not fulfill the requirement of Section 22-2501 D. C. Crim. Code. "For . . . where the oath was administered by a person having no legal authority to do so . . . or by one who had authority to administer certain oaths, but not the one in question, or by one who had authority seemingly colorable, but no authority in fact, there can be no conviction, for the oath is altogether idle" (48 *Corp. Jur.*, p. 856).

This result is entirely proper when examined in the light of precedent and logic. *United States v. Curtis*, 107 U. S. 671; *United States* v. *Garcelon*, 82 F. 611 (D. Col.); *United States* v. *Doshen*, 133 F. 2d 757 (C. C. A. 3); *United States* v. *Mannion*, 44 F. 800 (D. C. D. Wash. N. D. 1890); *United States* v. *Law*, 50 F. 915 (D. C. W. D. Va. 1892); and *United States* v. *Bedgood*, 49 F. 54 (D. C. S. D. Ala. 1891), all substantiate this result.

Consequently it is apparent that the local perjury statute was not violated and the conviction thereunder was improper.

Moreover, it is clear that the tribunal before which the petitioner gave his testimony was a Committee of the House of Representatives. Its existence as a branch of the national legislature is provided for by the United States Constitution (Art. I, Sections 1, 2); and the Committee on Education and Labor is a standing Committee of the House by virtue of a provision of the Legislative Reorganization Act of 1946 (Title I, Part 2, Section 121 (a)). Matters properly within the jurisdiction of the House Committee, and the subject matter of the hearing wherein petitioner testified, are national in character and scope. The particular legislation which was sought to be and which was, in fact, amended was the National Labor Relations Act (R. 84).

The times, places and manner in which the Committee could sit, subpoena and swear witnesses and take testimony for the use of the Committee and the House of Representatives was regulated by enactment of that body (Government Exhibit 2; R. 32). In administering an oath the officer designated to do so acted not by direction of local law but rather federal law (Government Exhibit 2; R. 32). In taking an oath and giving testimony before this federal body in connection with proposed federal legislation, a witness does so in obedience to a subpoena authorized by the House of Representatives and not in pursuance of any law of the District of Columbia.

Thus a witness who gives testimony pursuant to a law or direction of the United States rather than a state or the District of Columbia is accountable for the truth of his testimony only to the United States and perjury committed in the course of such testimony is an offense exclusively against the public justice of the United States. *Thomas* v.

Loney, 134 U. S. 312; *Caha* v. *United States*, 152 U. S. 211. This would follow regardless of where or in what part of the United States the testimony was taken. *Thomas* v. *Loney, supra.*

Section 231 of Title 18 of the United States Code, a federal statute, defines and prescribes punishment for the crime of perjury. There is no doubt that perjury committed before a federal body of the nature of a Congressional committee is punishable under that statute; there have been prosecutions for perjury committed under such circumstances. *United States* v. *Seymour*, 50 F. 2d 930 (D. C. Neb.); *United States* v. *Creech*, 21 Fed. Supp. 439 (D. D. C.); see *Caha* v. *United States, supra.*

If perjury is committed before a federal body inquiring into matters federal in nature, the fact that perjury was committed within the geographical limits of the District of Columbia should not prevent the operation of the federal perjury statute any more than the fact that perjury was committed with respect to matters federal in nature within the geographical limits of the State of Nebraska, as was the case in *United States* v. *Seymour, supra.* This would seem to be true though both the District of Columbia and the State of Nebraska had local perjury statutes. The fact that the District of Columbia has a perjury statute does not prevent its statute and the federal statute from subsisting together. Each has its legal and its geographical application. The determination of the specific legal application of each statute is no longer a matter of controversy. As was stated by GRONER, *C. J.*:

> "In Johnson v. United States, 225 U. S. 405, the Supreme Court said that the Criminal Code of the District and the Federal Criminal Code had definite territorial applications and they might subsist together; that the Federal Code embraces general legislation of general operation, while the District Code embraces local legislation of local operation; . . ." (*O'Brien* v. *United States*, 99 F. (2), at 369).

The crime of perjury committed before a Congressional committee is a crime under the Code which "embraces general legislation of general operation," and since there is no conflict respecting the operation of federal and local perjury statutes in the District of Columbia, the local statute may not be the basis for a prosecution under circumstances outlined hereinabove.

If perjury has been committed by the petitioner herein, he may be charged only with the commission of the same crime as could be charged anywhere else in the United States, to wit, violation of Title 18, U. S. C. A., Section 231.

> ". . . the power of punishing a witness for testifying falsely in a judicial proceeding belongs peculiarly to the government in whose tribunals that proceeding is had. It is essential to the impartial and efficient administration of justice in the tribunals of the nation, that witnesses should be able to testify freely before them, unrestrained by legislation of the State, or by fear of punishment in the state courts. The administration of justice in the national tribunals would be greatly embarrassed and impeded if a witness testifying before a court of the United States, or upon a contested election of a member of Congress, were liable to prosecution and punishment in the courts of the State upon a charge of perjury, preferred by a disappointed suitor or contestant, or instigated by local passion or prejudice" (*Thomas* v. *Loney*, *supra*, at p. 375).

It is submitted then that in the instant case, the Government should have prosecuted the petitioner for his false testimony under oath only under the law making such conduct a crime against the United States. This crime is defined not by the local District of Columbia Criminal Code but by 18 U. S. C. A. § 231. The indictment should, therefore, have been dismissed prior to trial.

The decision of the United States Court of Appeals for the District of Columbia is in conflict with the decision of

this court in *Johnson v. United States*, 225 U. S. 405 and with its own decisions hereinabove referred to. Moreover, the decision was prejudicial to petitioner in that he was exposed to and received a sentence in excess of that provided for by the general federal perjury statute.

It is respectfully submitted, therefore, that the petition herein should be granted.

POINT III.

Petitioner was deprived of his right to a fair and impartial trial as guaranteed by the Fifth and Sixth Amendments of the United States Constitution by the denial of motions made by petitioner under Rules 17(b) and 15(a) of the Federal Rules of Criminal Procedure.

The original record herein will show that on February 12, 1948 the petitioner argued a motion before the District Court:

> "1. For an order requiring the issuance of a subpoena to each of the prospective witnesses named in the supporting affidavit attached hereto and for the payment of the costs of issuance and service of such subpoenas as well as the fees to said witnesses, or in the alternative
>
> 2. a) for an order permitting defendant to take the deposition of said witnesses in Milwaukee at a date or dates fixed by said order and
>
> b) For an order adjourning the trial date herein to an appropriate time,'.

The petitioner's supporting affidavit showed that the foregoing application was made pursuant to Rules 17(b) and 15(a) of the Federal Rules of Criminal Procedure; that the petitioner was indigent; that the testimony of the named witnesses was necessary and material to his defense. The petitioner therein also listed a number of witnesses resi-

dent in Milwaukee, gave their addresses and stated that these witnesses would give evidence to show that the petitioner was not and never had been a Communist and did not endorse, support or participate in the activities of the Communist Party. In addition, the affidavit stated that the witnesses were unable to defray the cost of voluntarily appearing in Washington, D. C., though served with subpoena, and that the petitioner was unable to meet such expenses. The supporting affidavit concluded by showing good faith and by announcing that the petitioner could not safely go to trial without such testimony.

The motion was in all respects denied.*

The petitioner contends that the denial of this motion was such an abuse of judicial discretion as to warrant the granting of his petition and a reversal of the judgment of conviction.

Basic to the concept of a fair and impartial trial is the opportunity to present evidence. Where, as in the instant case, the accused stands charged with perjury respecting his political ideology, affiliation, and activity, the burden on the accused is at best a most difficult one. To disprove such a charge it is vital that the accused have the opportunity to present to the jury the testimony of those who worked with and lived with the accused to the end that said witnesses may testify to the intimate and unguarded actions and expressions of the accused. This is the sole method whereby an individual's political creed as implemented by activity and words, can be truthfully exposed and whereby a false charge relating thereto can be met.

The constitutional right to compulsory process guaranteed by the Sixth Amendment to the United States Constitution is of principal importance where, as here, wit-

* Except that the petitioner's bond was reduced from Five Thousand to One Thousand Dollars. The money thus made available did not belong to the petitioner and the original record herein shows that permission to use the money to defray the costs of transporting witnesses was denied.

nesses were to be called to testify in connection with an unpopular cause. Social pressures and the temper of the times are frequently powerful restraints upon voluntary appearance.

The right to process guaranteed by the Constitution has little meaning where great distances come between prospective witnesses and the trial forum and where the party on whose behalf the prospective witnesses are to appear is without means. To cure this deficiency, Rule 17(b) of the Federal Rules of Criminal Procedure provides that a court or judge

> "may order at any time that a subpoena be issued upon motion or request of an indigent defendant. . . . If the court or judge orders the subpoena be issued *the costs incurred by the process and the fees of the witnesses* so subpoenaed shall be paid in the same manner in which similar costs and fees are paid in case of a witness subpoenaed in behalf of the Government."

It was under the authority of this Rule that the petitioner made the foregoing application. The Rule was also the basis for repeating the application during the course of trial (R. 233 and as further appears from the original record herein). The second application differed from the first only in the reduced number of witnesses whose presence was sought.

To the extent that both applications were denied the rulings rendered it impossible for the petitioner to present vital testimony on the most material issue raised by the indictment. The opportunity to present evidence in his own behalf thus foreclosed resulted in a partial and unfair trial. Since the court below was vested with discretion in this matter and could thus at slight cost have insured a fair trial, it is respectfully submitted that it was guilty of abuse of discretion.

The Trial Court saw fit not only to deny the application to defray the costs of bringing said witnesses to the court-room but also rejected the less satisfactory but acceptable alternative of providing for the taking of depositions. Indeed, in its discretion the Court could have ordered the transfer of the prosecution to the forum where the witnesses resided. Either of the alternatives applied for would have afforded the petitioner the opportunity of presenting evidence which was crucial to the determination of his guilt or innocence. In this connection it is not without significance that the jury deliberated for almost four hours before returning its verdict. One can but conjecture as to the turn of events if the jury had had presented to it the testimony excluded by the rulings hereinabove mentioned.

As this Court has remarked:

> "To require a citizen to undertake a long journey across the continent to face his accusers, and to incur the expense of taking his witnesses, and of employing counsel in a distant city, involves a serious hardship, to which he ought not to be subjected if the case can be tried in a court of his own jurisdiction." *Hyde* v. *Shine*, 199 U. S. 62, 78.

The rulings below subjected the petitioner to this serious hardship, thereby denying to him a fair trial as guaranteed by the Fifth and Sixth Amendments to the United States Constitution.

POINT IV

The Court of Appeals for the District of Columbia committed reversible error in affirming the rulings of the Trial Court concerning the investigation of the jury panel by the Federal Bureau of Investigations.

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the . . . district wherein the crime shall have been committed, . . ." (Constitution of the United States, Sixth Amendment).

"An impartial jury is one which is of that frame of mind at the beginning of the trial, which is influenced during the trial only by legal and competent evidence produced during that trial against the defendant, and which bases its verdict upon the evidence connecting that defendant with the commission of that crime" (COOKE, *J.*, in *People* v. *Lashkowitz*, 3 N. Y. S. 2d 98, 102).

Upon the trial herein counsel for the petitioner observed that counsel for the Government had a set of papers which contained the results of an investigation of the jury panel by the Federal Bureau of Investigation. This was raised as an objection to the jury panel and was the basis for an application for copies of said information. Both motions were denied (R. 29-30).

The Trial Judge made no effort to ascertain whether the charge made by counsel for petitioner on the trial hereof was true and the Government's counsel did not deny the charge.

The United States Court of Appeals for the District of Columbia has decided there is no merit to the contention that the panel should have been disqualified or that the Court should have permitted petitioner's counsel to examine the Government's notes (*Christoffel* v. *United*

States, F. 2d). The basis for this decision is that there was no evidence that the Government made such an investigation.

The guarantee of an impartial jury makes it incumbent upon a Trial Judge to inquire whether in fact the Government has information about prospective members of the jury which is not available to the accused. A panel of jurors investigated by the Federal Bureau of Investigation upon the eve of trial cannot provide a jury which is free, uncoerced and impartial and which is influenced only by evidence produced on trial. *Sinclair* v. *United States*, 279 U. S. 749, 764; *United States* v. *McWilliams*, United States District Court, D. C., April, 1944 (unreported).

> "The jury is an essential instrumentality—an appendage of the court, the body ordained to pass upon guilt or innocence. Exercise of calm and informed judgment by its members is essential to proper enforcement of law" (*Sinclair* v. *United States*, *supra*, at 765).

The coercive effect of investigations by the Federal Bureau of Investigation upon a jury panel, many of whose members are Government employees within the scope of Executive Order #9835, the Loyalty Order, is too apparent where, as here, the jury had to pass on whether the Petitioner was a Communist.

To safeguard an impartial trial by jury and to establish equality between the Government and the accused, the Trial Judge should have inquired into the charge made by the petitioner. For the same reason the Court of Appeals should have set aside the conviction herein.

This failure to do so raises a question of general importance relating to the Fifth and Sixth Amendments of the Constitution which has never been but should be decided by this Court.

POINT V

It was error for the Trial Court to refuse to permit petitioner to read to the jury the balance of an exhibit previously introduced by the Government and admitted over objection.

The transcript of the petitioner's testimony before the Congressional committee was offered by the Government upon the trial herein "to prove the testimony [of] the defendant" (R. 78). Objection to the offer was then and there made on the grounds that the committee before whom the transcript was made was sitting without a quorum and therefore not competent (R. 78-81, 119-138). The transcript was nevertheless received in evidence as Government's Exhibit 6 (R. 141).

Thereafter, as appears from the original record, the Government read to the jury from the transcript. Subsequently, as similarly appears, the petitioner sought to read to the jury from the transcript and permission was denied.

In thus denying the petitioner the right to read from an exhibit already in evidence, especially after the Government had read from said exhibit, the Trial Court departed from the accepted and usual course of judicial proceedings and this ruling requires reversal of the judgment.

It has been the long recognized rule in all courts that when one party offers or reads from a portion of a document his opponent may introduce or read the remainder, provided it is relevant to the issues on trial and an aid to the proper understanding of what has already been received (VII Wigmore *On Evidence*, § 2113).

This rule has received judicial approval by this Court in *Tappan* v. *Beardsley*, 77 U. S. 427, *Sheatz* v. *Markley*, 249 Fed. 315, *cert. den.* 247 U. S. 518, and many other deci-

sions, as well as by the various Circuit Courts of Appeal including that of the District of Columbia (*Herfurth, Jr., Inc., et al.* v. *U. S.*, 85 F. 2d 719; *College and Foods Products Co.* v. *London Packing Co., et al.*, 65 F. 2d 883; *Grobelny* v. *T. W. Cowen, Inc.*, 151 F. 2d 810, 813). Since the petitioner proposed to read from his own testimony in aid of explaining and understanding what had previously been read therefrom, the ruling in the Trial Court was a departure from the foregoing precedents. This Court should therefore review and reverse the judgment herein.

CONCLUSION

The petitioner prays that a writ of certiorari issue to the United States Court of Appeals for the District of Columbia to review its judgment.

Respectfully Submitted,

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